

THOMAS STOELTING ET AL.

IBLA 81-627

Decided January 25, 1983

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring placer mining claims null and void ab initio in whole or in part. AA-19548, et al.

Affirmed.

1. Mining Claims: Determination of Validity -- Mining Claims: Location
-- Mining Claims: Recordation -- Mining Claims: Withdrawn Land

The requirements for location of a mining claim on the public domain are governed by relevant statutes of the state wherein the claim is located to the extent they do not conflict with Federal mining law. Where recordation of a certificate of location within 90 days of location of a claim is a required element of a mining claim location under state law and the certificate of location is not recorded until 2 years after segregation of the land from appropriation under the mining law, the claim is properly declared null and void ab initio as having been located on the land at a time when it is not open to location, regardless of the fact that claimant may have conducted preliminary activities on the land prior to segregation.

APPEARANCES: William E. Rollow, Esq., Washington, D.C., for the appellants; Dennis J. Hopewell, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Thomas Stoelting and others 1/ have appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated April 10, 1981, declaring 310 placer mining claims null and void ab initio in whole or in part because they were located on land withdrawn from mineral location. 2/ In addition, BLM declared the location of 70 placer mining claims acceptable.

Appellants' mining claims were the subject of prior administrative litigation. By decisions dated January 11, 1974, BLM declared portions of the mining claims null and void ab initio to the extent they were located on land withdrawn pursuant to Public Land Order (PLO) No. 5150, 36 FR 25410 (Dec. 31, 1971), for a utility and transportation corridor. This order withdrew the land "from prospecting, location, and purchase under the U.S. mining laws," subject to valid existing rights. Id. Notices of location for the mining claims were posted on the claims on January 2, 1972, and recorded with the Fairbanks Recording District on January 3, 1972.

On appeal from the January 1974 BLM decisions, appellants argued that the mining claims recorded in 1972 were actually amended locations of mining claims originally located in 1969, prior to the 1971 withdrawal order. In Thomas Stoelting, 17 IBLA 222, 224 (1974), the Board set aside the BLM decisions and remanded the case in order that BLM might afford appellants "an opportunity to establish that they met the requirements of the mining law, including the procedural requirements for making a location * * * prior to the time the land was segregated from location under the mining laws."

By notice dated July 27, 1979, BLM required appellants to submit within 30 days copies of the original notices of location or other evidence that the mining claims had been located prior to withdrawal of the land. Appellants submitted numerous affidavits and exhibits. The affidavit of Thomas Stoelting describes the general process of exploring and locating the mining claims, collectively known as the "Mount SI Project." He states that it has been the "uniform practice" of the Mount SI Project not to submit for recordation any mining claims "upon which location (i.e., entry) had been made" until monuments had been erected, the presence of mineral values had been established, the claim had been fully identified in writing, and the boundaries of the claim had been fully blazed (Affidavit at 2-3). Because the Alaskan terrain and climate usually prohibited this "pre-recordation work" from being completed within 90 days from the date of the first entry, it was customary to initially post the claim and thereafter repost the claim every 90 days until the work was completed. Id. at 3. Between July 10, 1968, and December 19, 1969, appellants' mining claims were "located" and substantially all "pre-recordation work" completed. Id. at 3-4. The decision was made to record all of the claims at one time in order to prevent "claim jumping (i.e., if

1/ The other appellants are: Georgia L. Stoelting; B. G. Williams; N. N. Stoelting; E. B. Baker; Thomas Stoelting II; Paul Marchuk; Nick Marchuk; Earl Vegoren; R. F. Dubell; A. V. Mitchell; A. V. Mitchell, Jr.; L. C. Moore; J. T. Ruhr; K. P. Vegoren.

2/ The appendix attached hereto contains a list of appellants' mining claims declared null and void either in whole or in part.

there had been a steady stream of recording, such would have created undue interest and the potential of claim jumping)." *Id.* at 10. The remaining affidavits and exhibits attest to appellants' endeavors prior to December 31, 1969, in the exploration and location of the mining claims.

In its April 1981 decision, on remand, BLM modified its January 1974 decision to reflect that the lands involved were segregated from mining location by the filing of notices of proposed classification for multiple use management (F-955 and F-12423), pursuant to the Act of September 19, 1964, 43 U.S.C.A. § 1411 (West Supp. 1982) (statute superseded). Notices of proposed classification were published in the Federal Register on January 1, 1970. See 35 FR 16 (Jan. 1, 1970). The notices stated that publication segregated the public land described therein from appropriation under the general mining laws. See 43 CFR 2461.5(a). In addition, the notices indicated that they would not affect valid existing rights.

In its April 1981 decision, BLM concluded that appellants' mining claims were not valid existing rights with respect to the notices of proposed classification and PLO 5150 because they were not "located" in accordance with State law prior to segregation of the land. The State statutes require that a certificate of location be filed with the recorder of the recording district in which a claim is located "within 90 days after the date of posting the notice of location on the claim." Alaska Stat. § 27.10.050 (1962). Failure to file the certificate of location within the required 90 days "constitutes an abandonment of the claim and the ground is open to location." Alaska Stat. § 27.10.060 (1962). In the present case, BLM concluded that, although appellants' mining claims may have been reposted every 90 days, they were not recorded in the Fairbanks Recording District until January 3, 1972, subsequent to segregation of the land.

In their statement of reasons for appeal, appellants admit that their mining claims were first recorded with the local recording office "on January 3, 1972," but contend that the "date of location" and not the "date of recording" controls on the question of whether they have valid existing rights (Statement of Reasons at 15, 17). Appellants argue that their claims were never abandoned and that, under State law, the failure to record only opened the claims to potential relocation by another party and, upon recordation, the original location was renewed. In addition, appellants argue that they were prevented from recording their claims during the period "from July 29, 1970, through June 30, 1972." *Id.* at 13. On July 29, 1970, a notice of trespass was served on appellants. In connection with this notice, appellants state that they met with Robert C. Krumm, District Manager, Fairbanks District, BLM, on September 8, 1970, and that Krumm informed appellants that no "further work" could be undertaken on their claims until the notice of trespass was lifted. *Id.* at 11. Appellants had planned to record their claims "at a date no later than the end of the summer working season (August-September) of 1971." *Id.* at 13. The notice of trespass was rescinded by letter dated June 28, 1972.

[1] It is provided by statute that, "The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, [and] amount of work necessary

to hold possession of a mining claim * * *." 30 U.S.C. § 28 (1976). Under the regulations implementing the general mining laws, rights to mineral lands are initiated "upon the discovery of minerals, by locating the lands upon which such discovery has been made." 43 CFR 3831.1. A location is made in part by "complying with the State laws, regarding the recording of the location in the county recorder's office." Id. Under Alaskan law, an attempted location of a mining claim that does not comply with the provision requiring recordation of the certificate of location with the recorder of the recording district in which the claim is located is void. Alaska Stat. § 27.10.010 (1962). The Alaska statutes require the filing of a certificate of location within 90 days of the date of posting the notice of location, after which time the claim is deemed abandoned and the ground open to location.

This Board has held that although the failure to record a mining claim as required by state law does not itself render the claim invalid, the withdrawal of the land prior to recordation by claimant will cause the claim to be null and void. R. Gail Tibbetts, 43 IBLA 210, 225, 86 I.D. 538, 545-46 (1979). Similarly, a classification of the land which segregates the land from appropriation under the mining laws has been held to constitute an adverse right which will invalidate a mining claim located and posted prior to segregation but not recorded as required by state law until 3 years after segregation of the land. H. B. Webb, 34 IBLA 362 (1978).

Publication of a notice of proposed classification in the Federal Register had the effect of segregating the land to the extent proposed, in accordance with section 4 of the Act of September 19, 1964, 43 U.S.C.A. § 1414 (West Supp. 1982). United States v. Rodgers, 32 IBLA 77 (1977), aff'd, Rodgers v. Andrus, Civ. No. 78-119 (D. Ore. Mar. 26, 1980). In the present case, notices of the proposed classification for multiple use management were published on January 1, 1970. The record indicates that the notices expired after 2 years, on December 31, 1971, in accordance with the statute. See 43 U.S.C.A. § 1414 (West Supp. 1982). However, on that date, the land was withdrawn pursuant to PLO 5150.

The earliest recording date of appellants' mining claims is January 3, 1972, subsequent to publication of the notices of proposed classification and PLO 5150. Accordingly, the mining claims cannot be deemed valid existing rights, which survived segregation of the land. Rather, they were located, i.e., posted and recorded, at a time when the land was segregated from mineral location, and were null and void ab initio to the extent they embraced land covered by the notices of proposed classification and PLO 5150. BLM properly declared appellants' mining claims null and void to that extent. George H. Fennimore, 63 IBLA 214 (1982).

Appellants appear to argue that recordation of their mining claims relates back under the Alaska statutes to the date of their original entry. A mineral location will relate back to an original location, thereby surviving an intervening withdrawal of the land, where it is determined to be an amended location, rather than a relocation. R. Gail Tibbetts, supra. However, we need not decide the latter question because there must be a location which is valid and subsisting prior to the withdrawal or segregation. In the absence of recordation, as required by State law, there was no location

of the claims prior to the segregation of the land. Id. There was nothing to which a subsequent location could therefore attach.

Appellants also argue that they were prevented from recording their mining claims from July 29, 1970, through June 30, 1972, due to certain alleged actions by BLM employees. Regardless of the merits of their contentions, appellants' argument does not alter the situation. In order to be considered valid existing rights, appellants would have had to record their mining claims prior to January 1, 1970, or within 90 days of a posting of the claims prior to segregation of the land. They were not so recorded.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Edward W. Stuebing
Administrative Judge

APPENDIX

Mining Claims Null and Void

<u>BLM Serial No.</u>	<u>Claim Name</u>
AA-19548 through AA-19550	Borealis: NW-10-3 through NW-10-5
AA-19551 through AA-19554	Borealis: NW-20-2 through NW-20-5
AA-19555	Borealis: NW-30-5
AA-19556 through AA-19558	Borealis: NE-10-3 through NE-10-5
AA-19559 through AA-19563	Borealis: NE-20-1 through NE-20-5
AA-19564 through AA-19567	Borealis: NE-30-1 through NE-30-4
AA-19568 through AA-19570	Borealis: NE-40-1 through NE-40-3
AA-19571 and AA-19572	Borealis: NE-50-1 and NE-50-2
AA-19573 and AA-19574	Borealis: NE-60-1 and NE-70-1
AA-19575 through AA-19578	Borealis: SW-10-2 through SW-10-5
AA-19579 through AA-19581	Borealis: SW-10-18 through SW-10-20
AA-19582 through AA-19585	Borealis: SW-20-2 through SW-20-5
AA-19586 and AA-19587	Borealis: SW-20-18 and SW-20-19
AA-19588 through AA-19591	Borealis: SW-30-2 through SW-30-5
AA-19592 through AA-19596	Borealis: SW-40-1 through SW-40-5
AA-19597 through AA-19600	Borealis: SW-50-1 through SW-50-4
AA-19601 through AA-19604	Borealis: SW-60-1 through SW-60-4
AA-19605 through AA-19608	Borealis: SW-70-1 through SW-70-4
AA-19609 through AA-19612	Borealis: SW-80-1 through SW-80-4
AA-19613 through AA-19616	Borealis: SW-90-1 through SW-90-4
AA-19617 through AA-19619	Borealis: SW-100-2 through SW-100-4
AA-19620 and AA-19621	Borealis: SW-110-3 and SW-110-4
AA-19622 and AA-19623	Borealis: SW-120-3 through SW-120-4
AA-19624	Borealis: SW-130-3
AA-19626 through AA-19644	Borealis: SE-10-2 through SE-10-20
AA-19645 through AA-19671	Borealis: SE-20-1 through SE-20-28
AA-19672 through AA-19699	Borealis: SE-30-1 through SE-30-28
AA-19700 through AA-19726	Borealis: SE-40-1 through SE-40-28
AA-19727	Borealis: SE-50-1
AA-19728 through AA-19750	Borealis: SE-50-6 through SE-50-28
AA-19751	Borealis: SE-60-1
AA-19752	Borealis: SE-60-17
AA-19579	Borealis: SE-60-27
AA-19760	Borealis: SE-70-1
AA-19761 and AA-19762	Borealis: SE-70-20 and SE-70-21
AA-19763 through AA-19765	Borealis: OM-1 through OM-3
AA-19766 through AA-19769	Borealis: A-1 through A-4
AA-19773	Borealis: A-8
AA-19791 through AA-19796	Borealis: JB-1 through JB-6
AA-19808 through AA-19811	Borealis: R-1 through R-4
AA-19860 and AA-19861	Borealis: RC-1 and RC-2
AA-19862 and AA-19863	Borealis: E-1 and E-2

Mining Claims Null and Void in Part

<u>BLM Serial No.</u>	<u>Claim Name</u>
AA-19625	Borealis: SW-130-4
AA-19770 and AA-19771	Borealis: A-5 and A-6
AA-19774 and AA-19775	Borealis: A-9 and A-10
AA-19797 and AA-19801	Borealis: JB-7 through JB-11

